87-1318

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

Civil Action Number ____

THE UNITED STATES SUPREME COURT

Term: October 1987

IN RE: L. NAPOLEON COOPER d/b/a
LARRY N. COOPER THE PROPRIETORSHIP

ON WRIT OF MANDAMUS AND PROHIBITION
IN THE ALTERNATIVE TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT ISSUE

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Pro se

STATEMENT OF QUESTION PRESENTED FOR REVIEW

(1) Were the Appeals Court Judges Wald, Mikva and Edwards illegally and inappropriately negatively influenced (as was the District Court) by the fact that the Petitioner was (1) a lone plaintiff/appellant pitted against "Wall Street's finest" (2) a Black American of African ancestry, and (3) an unknown or non-member of the right economic class, in contravention of law and simple justice and thereby lead to affirm the dismissal of petitioner's legal claims on totally improper grounds?

(2) Did Appeals Court Judges Wald, Mikva and Edwards err in affirming the dismissal of petitioner's action by basing their affirmance upon an incomplete review of the evidence and affidavits that made up the undisputed record of the civil action or did they deliberately cast a blind eye to objective evidence (favorable to the petitioner) in order to justify preconceived willful and inappropriate conclusions at law.

(3) Did Appeals Court Judges Mikva, Edwards and Chief Judge Wald err by failing to apply black-letter law (that action may not be dismissed unless the complaint fails to allege sufficient information to demonstrate entitlement to relief, District of Columbia v. Air Florida, Inc., 750 F.2d 1077, 243 U.S. App. D.C. 1 (D.C. Cir. 1984)) at the expense of petitioner's equal protection and due process of law rights under the U.S. Constitution.

(4) Did the petitioner in his complaint filed with the district court (at paragraphs 8, 86, 120-122, 125, 128-129, 134, 135, 73-78, 83, 94, 106, etc.) allege sufficient information which would entitle him to relief from Appeals Court Judges Wald, Mikva and Edwards, and was their finding that he did not a violent, erroneous and illegal injustice to the fundamental tenet (12(b)(6)) of federal procedure.

(5) Did Appeals Court Judges Wald, Mikva and Edwards err when they ruled October

9, 1987 that Petitioner failed to allege that he ever made a tender offer in his complaint (in view of the fact that petitioner set out under the heading, "The Tender Offer" his offer in full detail in his complaint at paragraphs 73-78? Based upon the undisputed facts of the case and the cases cited by Judges Wald, Mikva and Edwards in their October 9, 1987 Order and Memorandum (Voisin v. Bartell, Lewis v. McGraw and Piper v. Chris-Craft) (and those cited by petitioner), was there any factual or precedent basis whatsoever for them to find that petitioner did not submit a valid tender offer?

(6) Did Appeals Court Judges Wald, Mikva and Edwards act arbitrarily and willfully against petitioner when in the same October 9, 1987 Order and Memorandum as they recognized that petitioner "Cooper also alleges that General Electric Company ("GE") and RCA Corporation ("RCA") conspired with Dow Jones to refuse to sell advertising space to him and thereby restrain trade in RCA

stock," they also held (as a basis for affirming the district court's dismissal of his action), that petitioner's claim "does not constitute a violation of Section 1 of the Sherman Act [because] (officers or employees of the same firm do not provide the plurality of actors imperative for a Section 1 conspiracy)?"

(7) Did Judges Wald, Mikva and Edwards' classification and recognition of the GE offer as a "tender offer" in their order of October 9, 1987, recognize a basis for the application of the Williams Act (Section 14(e) disclosure provisions) to the solicitation of RCA shareholders by GE and RCA managements, in connection with that "GE tender offer."

(8) Did Appeals Court Judges Wald, Mikva and Edwards err when they found that petitioner Cooper's "damage claims ($78,250,000 immediate and $15,750,000,000 over a 50 year period (see complaint at paragraphs 134-135)) are frivolous in light

of ...[based upon]... the fact that Dow Jones' refusal to publish ... did not prevent him from otherwise purchasing RCA stock," when in fact the record clearly showed (at complaint paras. 74, 75 and 77(c) and (d)) that petitioner's offer required the full support of a controlling interest of RCA shareholders before Cooper's plans to buy even one RCA share could be implemented.

(9) Did Cooper's complaint (in which at paragraphs 8, 86, 94, 120, 122, 125-129, 134-135, etc., he alleged that he suffered injury as a result of conspiracy to his ability to trade and conduct his business) sufficiently allege that he incurred injury cognizable under the antitrust laws? Did those allegations of restraint of trade (by the Dow Jones, RCA, GE, etc.) state a claim upon which relief can be granted where evidence supports his allegations that the Dow Jones' refusal to sell was actually a conspiracy undertaken with others and a deliberate attempt to restrain his ability to trade in

regulated securities and raise funds for charities, which is petitioner's business and a legitimate for-profit pursuit.

(10) Should public company shareholders such as those of RCA Corporation retain the rightful authority under the Williams Act, Section 14(e) (once the management of RCA decided to recommend that RCA be sold) to:

(a) be informed of the existence of any standing competing offer to purchase the company previously submitted to management, and

(b) make the determining evaluation of any such offer as to the viability and/or valuation of the competing tender offer (even when uninformed as a result of an alleged management conspiracy with co-defendants Dow Jones to block publication of the competing offer by the Wall Street Journal?

(11) Is the issuance of writ necessary under the circumstances, as a matter of law to impose an equitable facilitation of justice upon the District Court and Appeals

Court Judges Wald, Mikva and Edwards where multiple, erroneous factual conclusions are alleged to have been reached by them on not one shred of supporting evidence.

(12) Was the dismissal affirmation by Appeals Court Judges Wald, Mikva and Edwards effectively a RACIALLY DISCRIMINATORY ENDORSEMENT OF ERROR COMMITTED IN THE LOWER COURT that was also illegally and unconstitutionally biased in favor of the lower court's error and the district court defendants alleged illegal behavior?

(13) Did such an action by Appeals Court Judges Wald, Mikva and Edwards establish a legal precedent--DEFINITION OF REASONABLENESS--applicable to matters of law and constitution that is subject to the racial and economic class prejudicial abuses of adjudicators (permit a new racial "test" for individual blacks seeking to enjoy equal protection of the law in the commercial arena)?

(14) Should the laws governing the securities of public companies such as the Appellee RCA and/or tender offers in connection therewith and should the laws governing access to the marketplace itself have the effect of determining the conditions under which all citizens may participate freely in the contest for corporate governance or should such law simply serve as a vehicle whereby established commercial antagonist may keep petitioner and other would-be competitors away from free access to the marketplace altogether (on a basis of race or perceived economic class)?

THE LIST OF PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

L. NAPOLEON COOPER d/b/a/ LARRY N. COOPER THE PROPRIETORSHIP, 2400 16th Street, N.W., #545, Washington, D.C. 20009; RCA CORPORATION, 1800 K Street, N.W., Washington, D.C. 20006; GENERAL ELECTRIC COMPANY, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004; GESUB, INC., 3135 Easton Turnpike,

Fairfield, Connecticut 06431; LAZARD FRERES & COMPANY, One Rockefeller Plaza, New York, New York 10020; DOW JONES & COMPANY, INC., 1025 Connecticut Avenue, N.W., Washington, D.C. 20036; THE WALL STREET JOURNAL, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036; RCA CORPORATION BOARD OF DIRECTORS, 1800 K Street, N.W., Washington, D.C. 20006; GENERAL ELECTRIC COMPANY BOARD OF DIRECTORS, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004; THORNTON F. BRADSHAW, 30 Rockefeller Plaza, New York, New York 10020; JOHN F. WELCH, JR., 3135 Easton Turnpike, Fairfield, Connecticut 06431; FELIX ROHATYN, One Rockefeller Plaza, New York, New York 10020; PETER G. SKINNER, 22 Cortlandt Street, New York, New York 10007; WILLIAM CUMMINGS, 420 Lexington Avenue, New York, New York 10007; DAVID E. MORAN, 22 Cortlandt Street, New York, New York 10007;

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2. Doe v. United States Department of Justice, 753 F.2d 1092, 243 U.S. App. D.C. 354 (D.C. Cir. 1985).
3. Humana, Inc. v. American Medicorp, Inc., 445 F.Supp. 613 (S.D. N.Y. 1977).
4. Lewis v. McGraw, 619 F.2d 192, 195-96 (2d Cir.) cert. denied, 449 U.S. 951 (1980).
5. Piper v. Chris-Craft Industries, 430 U.S. 25 (1977).
6. Ramirez de Arellano v. Weinberger, 745 F.2d 1500, 240 U.S. App. D.C. 363 cert. granted and vacated, 105 S. Ct. 2353, on remand de Arellano v. Weinberger, 788 F.2d 762 (D.C. Cir. 1984).
7. Seaboard World Airlines, Inc. v. Tiger International, Inc., 600 F.2d 355 (1979).

8. Securities and Exchange Commission v. Carter Hawley Hale Stores, Inc., 760 F.2d 945 (1985).

9. TSC Industries, Inc., et al. v. Northway, Inc., 426 U.S. 438 (1976).

10. Voisin v. Bartell Media Corporation, [1981-82 Transfer Binder], Para. 98,486, CCH Fed. Sec. L. Rep. 92,839 (S.D. N.Y. 1982).

11. Weeks Dredging & Contracting, Inc. v. American Dredging Co., 451 F.Supp. 468 (E.D. Penn. 1978).

REFERRAL TO THE ORDERS AND MEMORANDA FROM THE LOWER COURTS

1. **Order by District Court Judge Harold H. Greene (February 12, 1986) requiring RCA and GE to respond to petitioner's complaint and application for Temporary Restraining Order ("TRO").**

To comply with this order, District Court defendants RCA and GE in their pleadings:

(a) noted that the proposed GE-RCA transaction represented the largest non-oil merger in history. **(Petitioner argued size was not relevant.)**

(b) raised questions about the veracity of petitioner's affidavit in support of his complaint and application for TRO. **(Petitioner submitted sworn affidavit and exhibits totally discrediting all accusations and insinuations.)**

(c) acknowledged that petitioner had in fact on other occasions made offers to purchase "a controlling interest" of other Fortune 500 corporations. **(A fact con-**

veniently ignored by Judges Wald, Mikva and Edwards when they found petitioner had no business that would be applicable to antitrust law considerations.)

(d) alleged that petitioner failed or refused on all such occasions to provide any credible explanation of how he intended to finance these transactions. (Petitioner challenged this conveniently uninformed false allegation by submitting Mobil Oil, Coca-Cola, and BankAmerica exhibits proving otherwise to the sworn affidavit.)

(e) noted that petitioner had been arrested and convicted of illegal, non-violent, political protest acts some 10-14 years prior. (Petitioner conceded this, but had the federal judge and prosecuting U.S. attorney's (in those instances) own words speak to the issue in his sworn affidavit.)

(f) alleged that petitioner's decision to file his action 48 hours before shareholders meeting represented deliberate

bad faith. **(Petitioner exhibits and affidavits proved otherwise.)**

(g) acknowledged that petitioner on "November 21, 1985 sent a letter to RCA proposing to buy approximately 51% of RCA for approximately $3 billion" as "part of a broad visionary plan." **(A fact totally disregarded by Judges Wald, Mikva and Edwards when they acknowledged only petitioner's September 16 letter as a basis for later affirming the dismissal on 12(b)(6) (he never made a tender offer) grounds.)**

(h) acknowledged that petitioner's "complaint alleges that GE and RCA conspired with Dow Jones & Company, owner of The Wall Street Journal, to deny [petitioner] plaintiff the ability to publicize his offer by refusing to sell him advertising space." **(A fact ignored by Judges Wald, Mikva and Edwards when they ruled that petitioner did not allege that antitrust conspiracy was involved. (See complaint at 8, 86, 121, 122, 134, etc., App., pp. 22-37.)**

(i) argued that petitioner's offer was not a tender offer and, accordingly, that Section 14(e) should not apply to RCA management actions in connection with petitioner's offer. (Thereby recognizing that if petitioner's offer was a tender offer, Section 14(e) would apply.)

(j) argued that the concept of materiality under federal securities laws does not require a corporation to include in a serious proxy statement "... disclosure of ... crackpot communication ... received." (Petitioner argued that if RCA management could substantiate same, they could simply have given that description of his tender offer to RCA shareholders in one sentence and been in total compliance with Section 14(e). But to fail to disclose the existence of petitioner's offer (in order to deceive, manipulate and advance the competing GE offer), which they did, violated 14(e).)

2. Memorandum Order of Judge Harold H. Green, signed February 14, 1986, denying

petitioner's application for a Temporary Restraining Order and ordering petitioner to show cause (by sworn affidavit) why his action should not be dismissed as frivolous.

The District Court issued its order denying the TRO on grounds that:

(a) "Consummation of a shareholder vote authorizing the RCA-General Electric merger would not prevent this Court from setting aside the vote at a later date and ordering a new solicitation of proxies and a second shareholder vote.... The injury is therefore not irreparable. **(Petitioner argued tax complications and loss of premium in the market was irreparable.)**

(b) "With regard to [petitioner's] likelihood of success on the merits ... the Memorandum of defendants RCA and General Electric raise serious questions about plaintiff's affidavit and the motivation for his complaint ... [which] ... shows no substantial likelihood of success on the merits and may indeed be frivolous."

(Petitioner had not yet had any opportunity to respond to filings of defendants RCA and GE making these identical allegations.)

3. District Court Order and supporting Memorandum, July 29, 1986 dismissing (under Rule 11) petitioner's Civil Action #86-0373 against all defendants with prejudice.

Judge Greene's Order of July 29, 1986 held that:

(a) "Defendants established beyond peradventure that plaintiff could not possibly obtain funds needed to underwrite his offer for RCA stock." (Judge Greene chose to ignore the fact that no "funds" (not in petitioner's complete control) were required for petitioner's exchange tender offer for RCA stock to succeed.)

(b) "No reasonable person in plaintiff's position could realistically expect to consummate such an offer were it accepted by ... [RCA] shareholders." (No reason was given why Judge Greene felt he could speak for RCA shareholders. No unique

"position," other petitioner's race and/or perceived economic class was any different than that of other succeeding leveraged buyout entrepreneurs.)

(c) "Plaintiff's proposal could not be considered material to any RCA shareholder contemplating the GE/RCA merger." (As petitioner's tender offer was a better deal for RCA shareholders than the offer they finally accepted from GE, why would they not have considered petitioner's offer material?)

(d) "RCA shareholders were not deprived of adequate information with respect to either Cooper's tender offer or General Electric's tender offer because Cooper's proposal was frivolous." (As the district court referred to the GE offer as the GE "tender offer," how could Appeals Court Judges Wald, Mikva and Edwards find that no tender offer was involved as a 12(b)(6) basis for both affirming the district court dismissal and for saying no tender was

involved with the complaint for purposes of Section 14(e).)

Petitioner argued on appeal that:

(a) Judge Greene's judicial action of July 29, 1986 dismissing petitioner's civil complaint (No. 86-0373) against GE, RCA, Dow Jones, etc. as defendants, with prejudice (judgment on the merits), on Rule 11 grounds was unwarranted, illegal, racially-based and that it acted to threaten immediately to drive the petitioner from his business and imposed unwarranted and anticompetitive stumbling blocks to the operation of a free and competitive economy.

(b) Accordingly, Fed.R.Civ.P. 41(b), required that if a court renders judgment on the merits against a plaintiff, the court must make findings of fact as provided for in Fed.R.Civ.P. 52(a) and that for Judge Greene to find as he did amounted to an illegal finding "with prejudice," that signified that the dismissal was an adjudication on the

merits and a bar to any further litigation of petitioner's claim.

(c) The District Court ruling endorsed defendants RCA and GE's argument that the petitioner could "not possibly" obtain funds allegedly needed to "underwrite his tender offer," even where no such funds were needed.

(d) It was illegal for the district court, in view of the fact that petitioner possessed legally issued securities which he proposed RCA shareholders accept in exchange for their RCA stock, to prejudge the securities' value (in favor of RCA and GE) to any given RCA shareholder.

(e) Judge Greene's statements had the effect of a finding that it was "reasonable" for any party to disregard the requirements of the law in dealing with the petitioner as he was not "reasonable" enough to know that in his "position" it would be impossible for him to consummate such a transaction even if the owners of RCA had accepted his offer --

an example of unbelievable race prejudice and economic judicial discrimination.

(f) The district court erred when it (in effect) recognized as permissable violations of securities law by the defendants based entirely on the petitioner's "position." (Out of his place maybe?)

(g) Despite what "position" the court refers to, petitioner was entitled to have the rule of law level the playing field for all to play, not serve merely to limit the ability of outside competitors to join the game.

4. July 30, 1987 Order denying request that United Shareholders Association (independent third party) file amicus curiae brief and ordering appellant to show cause why district court Order of July 29, 1986 not be summarily affirmed.

Appeals Court Judges Starr, Silberman and McGowan held, "[o]n its own motion, that the parties show cause why district court order dismissing appellant's complaint

pursuant to Rule 11 ... should not be summarily affirmed for reasons stated by the district court or on another basis."

Petitioner in turn argued that:

(a) A shameful miscarriage of justice had occurred, as no evidence substantiated in any way that petitioner's offer was not reasonable in any manner, or unacceptable to a "reasonable" financial marketplace. **(Yet action dismissed was on that basis.)**

(b) That this so-called "reasonable" assumption was in fact race-based and would appear reasonable only in a racist circle of white citizens around a white hot fire in white robes.

(c) That the legal consequence of such a ruling had the effect of legitimizing for black financial entrepreneurs a prejudicial "race test."

(d) That the district court could easily have confirmed the legality and marketability of the existing securities petitioner proposed to exchange for the

shares of RCA Corporation within the context of the Federal Reserve System Regulation G (which routinely qualifies or disqualifies such securities), and not simply find that he was not "reasonable" enough to realize that what he was attempting to accomplish "could not possibly" be done by a person in "his position."

5. October 9, 1987 Order of Court of Appeals Judges Wald, Mikva and Edwards order that (1) the show cause order be discharged, (2) the district court erred when dismissing petitioner's complaint under Rule 11, Fed. R. Civ. P., and (3) the district court dismissal of appellant's complaint be nonetheless summarily affirmed (see Memorandum in lieu of opinion in support of that Order) on 12(b)(6) failure to state a claim grounds.

Appeals Court Judges Wald, Mikva and Edwards held in their order that:

(a) "Cooper alleged that the defendants committed fraud by conspiring to withhold from [RCA] shareholders information

about his offer for RCA stock in violation of Section 14(e)." (A claim for which relief can be granted petitioner argued.)

(b) "He also alleged that Dow Jones and its officers violated Section 1 of the Sherman Act and Section 13 of Robinson-Patman by refusing to sell advertising space to him." (As the purpose of their conspiracy was to restrain trade petitioner argued.)

(c) "Cooper sought damages of $78 million and declaratory and injunctive relief. (As evidence is available to prove these claims, petitioner argued that damages would be legal if awarded under the antitrust laws and were made payable by the regulated class only.)

(d) "Dismissal of a complaint as frivolous is not appropriate." (Neither was a dismissal on 12(b)(6) grounds, petitioner argued.)

(e) "Cooper alleges that defendants committed fraud by conspiring to withhold information about his offer for RCA

stock in violation of Section 14(e)." **(A valid claim; did they or didn't they?)**

(f) "This section [14(e)] applies only when a tender offer has been made. ... Cooper's complaint and affidavit ... make clear that Cooper never made a tender offer." **(Complaint extracts, paras. at 73-78, App., p. 26, say exactly the opposite, reading "The Tender Offer," etc.)**

(g) "His various letters refer only to prospective plans for offers that were never carried out ... (September 16, 1985 letter to various defendants...." **(The record, sworn affidavit exhibits in the district court, and pleadings say exactly the opposite. See Affidavit Exhibits 3b, 3c and 39 at App., pp. 41 and 50.)**

(h) "Cooper does not allege that he ever made an offer to purchase RCA shares ... to any RCA shareholders.... Because there was no solicitation Cooper failed to state a claim under Section 14(e)." **(Complaint says just the opposite and his solicitation (as**

opposed to the RCA solicitation for the GE offer) was admittedly blocked by co-conspirator Dow Jones and other defendants.)

(i) "Cooper also alleges that GE and RCA conspired with Dow Jones to refuse to sell advertising space to him and thereby restrain trade in RCA stock." (This would be a flat allegation of conspiracy for anyone else. If provable, relief would be granted under antitrust law. Yet Judges Wald, Mikva and Edwards held that no sufficient antitrust allegation was even made by petitioner despite complaint extracts, paras. 8, 86, 128, 129, 122, 134, etc. (App., pp. 22-36).)

(j) "Officers or employees of the same firm do not provide the plurality of actors imperative for a Section 1 conspiracy." (RCA, GE, Dow Jones and The Wall Street Journal employees are not one and the same; plurality of actors exists.)

(k) "Cooper alleged that he suffered a loss in excess of $78 million because he has been forced to forego his

planned purchase of RCA stock." (Evidence will substantiate this claim (at App., pp. 34-35.)

(1) These damage claims are frivolous in light of the fact that Dow Jones' refusal to publish Cooper's advertisement [regarding his offer] did not prevent him from otherwise purchasing RCA stock. (The record proves just the opposite (complaint extracts, paras. 74, 75 and 77(c) and (d), App., p. 26).)

STATEMENT OF SUPREME COURT JURISDICTION

This application that writ be issued is submitted to obtain relief for the petitioner from the arbitrary, capricious, discriminatory and illegal actions of Chief Judge Patricia M. Wald and Circuit Judges Abner J. Mikva and Harry T. Edwards taken against him in connection with his Civil Action Number 86-7005 before the United States Court of Appeals for the District of Columbia Circuit.

Petitioner alleges that a series of gross and violent black-letter law violations

were committed against him and that the denial of equal protection and due process of law rights resulted from the alleged illegal acts of the Judges which warrants the exercise of the Supreme Court's discretionary powers. Supreme Court action would be in aid of its appellate jurisdiction, as relief for petitioner cannot be had in any other form from any other court.

Petitioner's suggestion that his action be heard by the Court of Appeals en banc was denied August 18, 1987 and his Petition for Rehearing, submitted to Judges Wald, Mikva and Edwards, was denied without comment on November 10, 1987.

Petitioner is not entitled as a matter of legal right to have his action reviewed on appeal nor on writ of certiorari and therefore his only right to review under law is pursuant to Supreme Court Rules 26 and 27 which govern the issuance of the extraordinary writs herein requested.

The order to be reviewed is that of October 9, 1987 under the signature of Judges Wald, Mikva and Edwards which summarily affirmed the dismissal of petitioner's action by the district court (July 29, 1986) even though on different (12(b)(6)) grounds than the District Court used.

28 U.S.C. 1651(a) reads as follows:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
>
> (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, CITES AND RULES WHICH THE CASE INVOLVES

The pertinent text of the following citations has been set forth in the Appendix or text as indicated.

APPENDIX CITES

A. Constitutional provisions (App., p. 52).

B. Statutes, U.S.C. 28 1651(a) and (b)) (App., p. 53).

C. Federal Rules of Civil Procedure, 12(b)(6), 41(b), 52(a) (App., p. 54).

D. Rules of the Supreme Court, 26 and 27 (App., p. 60).

E. Definition (Black's Law) of Appellate Jurisdiction (App., p. 63).

TEXT CITES

15 U.S.C. Sec. 78n(e) (1981), Section 2(e) of the Robinson-Patman Act, 15 U.S.C. Sec. 13(e) and Section 1 of the Sherman Act, 15 U.S.C. Section 1 (Supp. 1987). (See pp. 34, 35 and 50, below.)

STATEMENT OF THE CASE (INCLUDING ORIGINAL BASIS FOR FEDERAL JURISDICTION)

This was a non-lawyer, pro se action seeking declaratory, injunctive and compensatory relief. Petitioner sought to restrain Defendant RCA Corporation ("RCA") (and those persons in active concert or participation

with them) from proceeding with the vote on the RCA-General Electric Company ("GE") merger agreement which was scheduled to take place at a special meeting of RCA shareholders on Thursday, February 13, 1986, alleging RCA management violated Sec. 14(e) by failing (in an effort to deceive and manipulate RCA shareholders being asked to tender their shares) to disclose that plaintiff's superior offer to purchase existed while recommending the sale by RCA shareholders of their securities to GE (in connection with the GE effort to take control of RCA at a premium price over market (a tender offer)).

Petitioner asked the district court to require defendant RCA to disclose to uninformed and unsuspecting RCA shareholders the existence of petitioner's then-pending competing tender offer (formally submitted to RCA management) to purchase RCA shares, in accordance with the Williams Act (14(e)) provision.

The Wall Street Journal was alleged to be a co-conspirator in the petitioner's complaint, along with GE, RCA and other district court defendants, including the GE and RCA Boards of Directors.

BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

The complaint was filed and the jurisdiction of the federal district court was originally invoked to obtain civil relief against defendants alleging that their actions involved violations of Section 14(e) of the Williams Act (material omission) of the Securities Exchange Act of 1934; 15 U.S.C. Sec. 78n(e); Section 1 of the Sherman Act, 15 U.S.C. Sec. 1; and Section 13 of the Robinson-Patman Anti-Discrimination Act, 15 U.S.C. Sec. 13e.

Jurisdiction was said to be conferred on the court by: (1) Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78aa, which gives the district court's exclusive jurisdiction over violations of the Williams Act and 15 U.S.C. Sec. 15 antitrust

laws; (2) Section 1337 of the Judicial Code, 28 U.S.C. Sec. 1337 (1982), in that this action arose under an Act of Congress regulating commerce; (3) Section 1331 of the Judicial Code, 28 U.S.C. Sec. 1331, in that the action arose under the laws of the United States (federal question); and (4) Section 1332 of the Judicial Code, 28 U.S.C. Sec. 1332, in that there was diversity of citizenship between the plaintiff and all defendants and that the sum or value in controversy, exclusive of interests and costs, exceeded $10,000.

Section 14(e) of the Securities and Exchange Act of 1934, 15 U.S.C. Sec. 78n(e) (1981) provides:

> It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any

such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

Section 2(e) of the Robinson-Patman Act, 15 U.S.C. Sec. 13(e) provides:

> It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

Section 1 of the Sherman Act, 15 U.S.C. Sec. 1 (Supp. 1987), provides:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a

corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

FACTUAL SUMMARY-CASE HISTORY

On September 16, 1985, petitioner gave formal notice to RCA management/directors of his intention to submit to them an offer to purchase the RCA Corporation directly from RCA shareholders **(a fact not in dispute).**

On October 1, 1985, the petitioner sent another formal notice to the management of RCA **"Re: Acquisition of RCA Corporation"** stating that it was a "studied notification of interest to undertake an offer to purchase RCA Corporation ... and of a willingness ... to negotiate." **(Not disputed.)**

On November 21, 1985, plaintiff submitted to RCA management and directors, through its President and Chief Executive Officer, Mr. Robert R. Frederick, a "formal" offer to purchase (tender exchange offer) whereby a debt security package with a face amount of $66.17 per share was offered to RCA

shareholder for 4.999% or 4,484,103 shares of RCA common stock, subject to a negotiated acquisition pact, or the tender to the offer by holders of a controlling interest, 80%, or 71,760,000 common shares. Petitioner stated that his plan called for him to exchange existing debt securities acquired from Project 76 - An American Affair, Inc. (a non-profit publicly charitable corporation) and for him to issue for exchange new RCA debt securities once he gained the support of a controlling interest of RCA shareholders. The $66.17 face amount exchange offer made by petitioner could by March 1986 be valued by RCA shareholders from a low of $76.86 per share to a high of $112.49 per share depending on certain tax and other considerations. On September 16, 1985 when the offer notice was submitted to RCA management, RCA stock was selling for approximately $31 (of the $66.17 face amount of the note combination), representing a substantial premium over market.

On November 29, 1985, petitioner sent another formal letter to the management and directors in "Re: **Initiation of Acquisition of RCA Equity.**" This letter advised "that the [petitioner] ha[d] commenced an initiative in which it is attempting to negotiate the ... purchase of RCA Corporation ... and to commit certain owners to tender their RCA shares prior to announcement of identical terms and conditions to the general public ... and for [RCA management/directors to] expect [despite their having ignored the formal offer] to receive ... additional details on the day the offer to purchase is published."

The Wall Street Journal blocked publication of Petitioner's RCA offering announcement and within days (by December 6, 1985) RCA and GE managements were meeting secretly.

On December 11, 1985, RCA and GE agreed to a business combination whereby GE would offer to purchase all of RCA's outstanding common shares tendered at $66.50 (actual

market value was viewed to be as low as $59.97 by the stock market). GE's stated objective was to buy all the shares of RCA (as it ultimately did) in order to gain complete control of RCA (a classic tender offer fingerprint).

The total value of petitioner's offer to RCA shareholders in excess of GE's offer (based on 90 million common shares outstanding) ranged from a low of $1,520,100,000, or $16.89 per share, to a high of $4,726,800,000, or $52.52 per share.

On January 13, 1986, RCA sent to all its shareholders a proxy statement in which it announced a special February 13, 1986 meeting (during which a vote on the merger agreement between RCA and GE would be conducted) and recommended to RCA shareholders that they vote their approval of the merger and subsequently tender their securities to GE and enclosed a proxy and solicitation for that purpose. No disclosure of the existence of petitioner's pending competing offer to

purchase was made in the proxy solicitation, and material misstatements were made.

On February 10, 1986, in the U.S. District Court for the District of Columbia, petitioner brought an action at law for disclosure and damages and sought equitable and injunctive relief to stop the voting until a determination on the merits could be made.

On February 12, 1986, the district court ordered defendants RCA and GE to respond to petitioner's complaint. (They did with the litany of insinuations and charges against the petitioner (referred to above, pp. 13-16), including that he had not in the past been willing to explain how he would finance his offer, that he could not finance the offer he had submitted, that he was acting in bad faith, etc.).

On February 14, 1986, the district court denied petitioner's request for injunction on grounds that his claims were questionable and ordered that petitioner file affidavits

answering defendants' charges of bad faith lest his action and complaint be dismissed under Rule 11 as frivolous.

On February 20, 1986, petitioner so responded and also filed an application for preliminary injunction on the basis of Weeks Dredging & Contracting, Inc. v. American Dredging Co. ("Weeks"), 451 F.Supp. 468 (1978) (see App. at p. 78), and Humana, Inc. v. American Medicorp, Inc. ("Humana"), 445 F.Supp. 615 (S.D. NY 1977) (see App., p. 66).

He argued that in Weeks, the Court ruled that a competing tender offeror has standing under the Williams Act to seek preliminary and final injunctive relief. The Court stated that the Supreme Court (in Piper v. Chris-Craft Industries ("Piper"), 430 U.S. 1, 97 S.Ct. 926, 51 L.Ed. 2d 124 (1977) (see App. at pp. 68-71) had concluded that a tender offeror does not have an implied cause of action for damages under Section 14(e). The Court's rationale in Weeks was that

employing injunctive relief for a tender offeror under the Williams Act would not be inconsistent with the legislative scheme because, unlike a damage remedy, the injunctive remedy does not appear to impose any burden upon investors when it is properly invoked, holding that, "If an injunction is not issued prior to the shareholders' voting, it will prevent the shareholders from making informed decisions."

Humana (App., p. 66) also states the proposition that a tender offeror has the right to sue for injunctive relief under the Williams Act if the shareholders or investors of the target company would benefit if the allegations of the complaint are true and the relief is granted.

The petitioner sought to force defendant RCA and others to disclose material information to the protected class (RCA shareholders) in its proxy solicitation statement. In recommending GE's tender offer, RCA management should also have disclosed the

existence of the other pending tender offer submitted to them (petitioner's). To not do so was misleading, deceptive, manipulative, misrepresentative and a material omission.

In TSC Industries, Inc. et al. v. Northway, Inc., 426 U.S. 438 (1976), the Supreme Court ruled that an omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. See, also, Seaboard World Airlines, Inc. v. Tiger International, 600 F.2d 355 (1979) (see App. at p. 73).

Petitioner's competing offer was important in deciding how to vote as it offered superior form and financial return.

Petitioner argued that defendants' failure to disclose and the conspiracy to block his public announcement from reaching RCA shareholders caused him to sustain a $78,750,000 loss.

Petitioner argued that defendants (regulated class) should be held financially

accountable in order to compensate protected RCA investors (the protected shareholder class) for losses they too sustained.

On July 29, 1986 the district court ruled that petitioner's complaint be dismissed under Rule 11, with prejudice, going to the merits of petitioner's action (see App., p. 5).

August 4, 1986 Petitioner noticed appeal and sought to have **evidentiary** hearings ordered.

On August 18, 1987 the request that an en banc hearing take place was denied.

On October 9, 1987, Judges Wald, Mikva and Edwards found that the district court erred by dismissing petitioner's action under Rule 11, but **should** have dismissed petitioner's complaint on Rule 12(b)(6) grounds.

On November 10, 1987 petition for rehearing was denied.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT; PRELIMINARY STATEMENT OF RELATED IMPORTANT ISSUES

Lower courts and defendants GE and Gesub, Inc., RCA, Thornton F. Bradshaw, Lazard Freres & Co., Felix Rohatyn and others argued, among other things, that petitioner either failed to state a claim, court review was not warranted by existing law or a good faith argument for the extension, modification or reversal of such law, that Cooper's "offer" expired by its terms, that no shareholder could have considered Cooper's "offer" to be of any significance in deciding how to vote on the GE/RCA merger, that while Cooper's papers suggest that some of his proposals were actually presented by corporate managers to their boards of directors, **"there is no substantiation for this,"** that Cooper chose to present nothing to RCA's shareholders, that Cooper neither pleaded nor suffered any injury to his trade or business cognizable under the antitrust laws, and that

disclosure of petitioner's "offer" would have confused shareholders.

Petitioner did submit a formal offer to defendant RCA on November 21, 1985 (see district court Affidavit, Exhibit 3c, at App., p. 41) and initiated same in his November 29, 1985 letter (see district court Affidavit, Exhibit 3d at App., p. 40). Accordingly, the offer did not expire by its own terms.

The petitioner's offer, even citing the unrealistically low valuation given by defendants, was far superior ($3.80 or 106%) to the $62.37 value placed on the GE offer by the New York Stock Exchange as of Friday, March 7, 1986 (long after the complaint filing).

Petitioner's two-stage tender offer was subject to an automatic second-stage 14d-1 filing with the Securities and Exchange Commission ("SEC") covering virtually 100% of all RCA outstanding common shares.

Petitioner explained in his offer, pleadings and complaint (for complaint extracts, paras. 74-75, 77(c) and (d) at App., pp. 26-29) that he proposed to finance the transaction through an exchange of Project 76 securities and the creation for exchange of new RCA debt securities to be issued once he gained control or the support of a controlling interest in RCA common shares (for district court Affidavit, Exhibit 3c, see App., p. 41).

Petitioner also argued that RCA's management and directors were specifically and legally required to make a determination with regard to his offer and to advise RCA shareholders and to include knowledge of the existence of petitioner's competing offer in its official proxy statement of January 13, 1986 especially because they were recommending to RCA shareholders that they sell out to the GE tender offer.

So far, the regulated class has escaped (under existing judicial interpretation),

paying financial damages to the protected class when found guilty of violations of Section 14(e). This action seeks a precedent Section 14(e) action for the assessment of damages against the regulated class. In this respect, there is a good faith argument for the extension of existing case law (i.e., Section 14(e) should have sharper teeth).

The lower court defendants should not have conspired to subvert (deliberately) economically beneficial competition or restrained petitioner's freedom to trade (by refusing to sell advertising space to announce his offer) at the expense of RCA shareholders. **Petitioner sought only to compete on an equal footing with his GE competition for control of RCA.**

As RCA shareholders did agree (on an uninformed basis) to sell out their interest in the RCA Corporation, logic dictates that they would have considered any competing offer that demonstrated superiority in either price or form.

Petitioner raised the issue that whether defendants' violations occurred in connection with the GE/RCA tender offer Agreement, the related proxy solicitation, petitioner's tender offer, or all three, the action was triable in the federal Court, and, as two tender offers were at issue, Section 14(e) did apply. The defendants' only concern was to manipulate the outcome of the GE tender offer.

Defendants never disputed that petitioner's offer was received, was not investigated, and that there was no disclosure of its existence to RCA shareholders by the defendant RCA or GE managements in RCA's solicitation on behalf of the GE offer.

No one disputed that petitioner had a sufficient face amount of charitable securities to purchase 100% of RCA common stock. The petitioner was never free to publicize his offer in the Wall Street Journal, and even defendants GE and RCA (in their February 12, 1986 pleading) did not dispute that

petitioner had a "history of contesting for the control of major American corporations" (petitioner's alleged business).

FAILURE TO STATE CLAIM 12(B)(6) DISMISSAL ORDER ISSUES

Here we had a lone, non-lawyer, pro se plaintiff pitted against the might of "Wall Street's Finest." That reality permeated his case from the beginning and (petitioner respectfully submits) probably influenced the district court's and Appeals Court Judges Wald, Mikva and Edwards' decisions to dismiss this case on totally improper grounds.

It is black-letter law that petitioner's action may not have been dismissed [on 12(b)(6) grounds] unless the complaint failed to allege sufficient information to demonstrate entitlement to relief. District of Columbia v. Air Florida, Inc., 750 F.2d 1077, 243 U.S. App. D.C. 1 (D.C. Cir. 1984). Moreover, to avoid dismissal, petitioner need not have presented any proof of his claims, but need only have alleged sufficient facts

to establish a cause of action (see App., p. 64).

The Supreme Court and the Appeals Court for the D.C. Circuit in other cases have held that a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that petitioner can prove no set of facts in support of his claim which would entitle him to relief. DOE v. U.S. Dept. of Justice, 753 F.2d 1092, 243 U.S. App. D.C. 354 (D.C. Cir. 1985) (see App., p. 65), Ramirez de Arellano v. Weinberger, 745 F.2d 1500, 240 U.S. App. D.C. 363 cert. granted and vacated, 105 S. Ct. 2353 (see App. at p. 72), on remand de Arellano v. Weinberger, 788 F.2d 762 (D.C. Cir. 1984).

To say that petitioner did not allege sufficient information in his complaint that would entitle him to relief did violent injustice to this fundamental tenet of federal procedure. Petitioner not only alleged sufficient facts entitling him to relief; he also produced credible proof

thereof, even though he was under no obligation to do so.

For original paragraph extracts of the Complaint, see Appendix at pages 22-37: Dow Jones conspiracy allegations (paras. 8, 86, 120, 122, 128, 129, 134); petitioner's Dow Jones damage claim allegations (paras. 120, 122, 134-135), allegations regarding Dow Jones publication refusal (paras. 54, 55, 62, 63); allegation regarding restraint of petitioner's right to trade by Dow Jones and others (paras. 125, 128, 129, 134); allegations regarding "The Tender Offer," premium over market price, etc. (paras. 73-78, 83); allegations regarding conspiracy to deceive and manipulate the protected shareholder class and violate Section 14(e) (paras. 94, 134, 106).

Appeals Court Judges Wald, Mikva and Edwards found that the district court erred when they dismissed the petitioner's action. Yet, they themselves erred when stating that petitioner failed to state a claim under

Section 14(e). Petitioner's complaint detailed not only the fact that he made the tender offer, but he set out that offer in full detail. (See, complaint, paras. 73-78, at App., p. 26 ("The Tender Offer").) Moreover, as RCA has acknowledged that its management/directors (438,737 common shares beneficially owned) received petitioner's tender offer, it cannot be plausibly argued that petitioner never submitted his offer to any RCA shareholder.

To say that petitioner's offer to purchase was not a tender offer or even that petitioner did not possess the financial means to support the offer are factual questions that go to the ultimate issues of this case and should not have been dismissed with the back of the hand.

Petitioner needed only allege (as he did) that the defendants' failure to disclose the existence of his pending competing tender offer to purchase had the effect of deceiving or manipulating RCA shareholders. (See

paras. 8, 86, 94, 106, 125, 134, etc. at App. pp. 22-37.)

RCA management disputed the valuation of petitioner's offer, but never disputed (at all) that they failed to disclose the existence of same when recommending, through "solicitation" (January 13, 1986), the GE tender offer or when describing "relative" events.

GE's "tender offer" (recognized as such in the district court memorandum order dated July 29, 1986) for RCA shares and that of the petitioner were both made at a substantial premium over market for RCA shares (see chart in App. at p. 48). Both offers were conditional upon the tender to the offers of a minimum number of shares or upon the support of a controlling number of RCA shareholders (see App., p. 74). By definition, that made the GE offer a tender offer and the petitioner's formal offer also a tender offer (see SEC v. Carter Hawley Hale

Stores, 760 F.2d 945 (1985) excerpts at App., p. 74.)

There was simply no basis for finding, especially at that preliminary stage of the proceedings, that the petitioner's tender offer was anything other than a tender offer. The fact that the defendants acknowledged obstruction of the publication of his tender offer, should not have led Judges Wald, Mikva and Edwards to find that 14(e) did not apply because the defendants succeeded in blocking publication.

Appeals court Judges Wald, Mikva and Edwards should not have unfairly discounted crucial and dispositive evidence in the official court record (see Affidavit, Exhibits 3b, 3c and 3d at App., pp. 40, 41 and 50), including that petitioner's formal offer to purchase was at a premium over market, and subject to the tender of a controlling interest of RCA shareholders, both of which are recognized fingerprints of a tender offer. (see App. for extracts of

Voisin v. Bartell Media Corp., CCH 1982 Binder, Paras 9846 (at p. 76), Piper v. Chris-Craft Industries, 430 U.S. 26-28 (at pp. 68-70), and Lewis v. McGraw, 619 F.2d 192 (1980) (at p. 67).

Accordingly, any failure by GE, RCA or Lazard Freres & Co. to disclose, participate or facilitate the failure to disclose such information (such as Dow Jones and the Wall Street Journal did), in connection with either offer was illegal under Section 14(e) (see Weeks Dredging and Construction v. American Dredging Co., 45 F.Supp. 468 (1978) (at p. 78), Humana, Inc. v. American Medicorp, Inc., 445 F.Supp. 613 (1977) (at p. 66), and Seaboard World Airlines, Inc. v. Tiger International, Inc., 600 F.2d 355 (1979) (at p. 73).) The simple allegation that they conspired together to do it stated a clear claim for which relief can be granted.

The petitioner alleged that GE, RCA and Lazard Freres allowed the material omissions,

perpetuated others and made material misstatements to RCA shareholders (the purpose being to deny RCA shareholders adequate information), and they failed to disclose the manipulative and deceptive Lazard Freres role in the negotiations with GE that advanced GE's ability to acquire control of RCA.

As the Dow Jones defendant was alleged to have deliberately kept material information away from RCA and other shareholders by refusing to sell advertising space to the petitioner in a conspiratorial attempt to restrain trade and competition, they violated Section 1 of the Sherman Antitrust Act. (See original complaint extracts at App., pp. 22-37).

CONCLUSION
WHY WRIT SHOULD ISSUE
IN 12(B)(6) CONTEXT

Judges Wald, Mikva and Edwards said that petitioner Cooper never alleged that defendant Dow Jones conspired with others and therefore he did not state an antitrust claim

from which relief could be granted. (The complaint extracts at pp. 22-37, paras. 8, 84, 134, etc. prove the opposite.)

Judges Wald, Mikva and Edwards ignored all legal precedent defining a tender offer (See Appendix for case extracts, Lewis v McGraw (p. 67), Piper (pp. 68-70), Voisin v. Bartell (p. 76), and SEC v. Carter Hawley (p. 74)), ignored evidence that a formal tender offer had been made by petitioner (see App., p. 26, para. 73); ignored the allegations made in the complaint that a tender was made, and ignored the fact that the tender offer was set out in full detail in that same complaint (see paras. 73-78 and App. at "The Tender Offer," App., pp. 26-29).

These actions (by Judges Wald, Mikva and Edwards) radically violated black-letter law and equity such that extraordinary relief is the petitioner's only option (as petitioner is not entitled by right to be heard on appeal by the Supreme Court of the United

States and previous en banc and rehearing requests were denied).

The District Court dismissed petitioner's complaint under Rule 11 (with prejudice) on the basis of a finding of fact going to the merits of petitioner's complaint on circumstances that left only petitioner's race and perceived economic class as mitigating factors. Judges Wald, Mikva and Edwards erred when they affirmed that dismissal.

They erred when they fail to order that evidentiary hearings be held and when they never questioned just what the district court meant when it held that no "reasonable person in petitioner's position ... [and] ... no reasonable [RCA] shareholder" would accept such an offer and no such offer could be consummated even if RCA shareholders "accepted" it.

Race and perceived class were the only differences between petitioner and his peers participating in petitioner's line of

business (non-cash, leveraged buyout business) at that time.

Any fair or objective viewing of the facts before this Court reveals:

(1) That petitioner's complaint at paragraphs 73-78 alleges that he made a tender offer and, further, set out the tender offer in full detail.

(2) The petitioner supplied proof that after his first September 16, 1985 letter, RCA management received others, including his November 21 letter (containing formal offer and terms and conditions) and his November 29, 1985 letter, initiating same offer.

(3) Petitioner had no choice but to seek the issuance of writ hoping that this honorable Court would slap down this travesty in an exercise of its appellate jurisdiction.

(4) Petitioner both (a) explained his plan to the management of the Mobil Oil Corporation (see Affidavit Exhibit, text of April 8, 1985 Mobil letter to petitioner at App., p. 38); other examples include Coca-

Cola Company, Halliburton, Inc., AMR, etc.), and (b) that the management of the BankAmerica Corporation made a presentation of petitioner's plan to the BankAmerica November 4, 1985 Board of Directors meeting (see Affidavit Exhibit, text of BankAmerica November 5, 1985 letter to petitioner at App., p. 51).

(5) Petitioner clearly established that he sought to gain control of RCA, sought to publicize his offer to purchase RCA stock in the Wall Street Journal, made his offer contingent upon the tender of a controlling number of RCA shareholders (see App. at p. 41), offered a premium price for RCA shares, and allowed that he would ultimately purchase up to 100% of all tendered RCA shares, subject to negotiation, etc.

(6) Judges Wald, Mikva and Edwards cited Piper (in which at pages 26-28 the Supreme Court discusses the legislative intent (to protect shareholders "by requiring the disclosure of pertinent information to

stockholders when persons seeking to obtain control of a corporation....," 113 Cong. Rec. 854 (1967), etc.); Lewis v. McGraw, 619 F.2d 192, 195-96 (2d Cir.), cert. denied, 449 U.S. 951, 1980; and Voisin v. Bartell Media Corp. [1981-82 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 98,486 at 92,845-46 (S.D.N.Y. 1982), to justify finding that petitioner failed to state a claim for which 14(e) relief could be granted (in spite of the evidence, see App. at pp. 22-37 for original Complaint paragraphs 8, 78-78, 86, 94, 106, 120-122, 125, 128, 129, 134, 135, etc.).

(7) In the Lewis v. McGraw case, there was an agreement between the litigants that no tender offer was involved (see App., p. 67).

(8) In the Voisin v. Bartell Media Corp. case (see App., p. 76), the Court found that as the party against whom the Williams Act was sought to be applied already had control of the company in question and was not seeking control.

(9) Citing those cases in the instant circumstances was wrong and put forth a new definition of a tender offer found nowhere else in law or precedent and one that contradicted the Supreme Court, the lower court record and petitioner's complaint.

(10) Piper, Voisin and Lewis all set out conditions where Section 14(e) is applicable. (See App., pp. 67, 69 and 76).

(11) Judges Wald, Mikva and Edwards, at page 5 of the October 9, 1987 Order Memorandum, state clearly that "Cooper also alleges that GE and RCA conspired with Dow Jones (the publisher of the Wall Street Journal) to refuse to sell advertising space to him and thereby restrained trade in RCA stock." (See App. at paras. 8, 86, 134, etc., pp. 22-37).

(12) Even the lower court defendants conceded that petitioner had a history of attempting to gain control of public companies, and despite petitioner's alleged damages (as in his original complaint at paragraphs 120-122, 134, 135, etc., App. pp.

22-37), Judges Wald, Mikva and Edwards took the view that he failed to allege he suffered any injury to his trade or business.

(13) Petitioner alleged and sought to recover from the regulated class $78 million in damages on grounds that defendants interfered with his right and ability to trade (see complaint at paragraph 120-122 and 134, 135, App., pp. 32-35 and 35-36).

(14) Judges Wald, Mikva and Edwards held that because defendants succeeded in keeping petitioner from reaching RCA shareholders to solicit their support, even though he was seeking control of RCA at a premium, the defendants can now say that Cooper's offer is not an offer because he could have bought RCA shares under his plan without a public announcement. Yet, under petitioner's plan he could not purchase even one RCA share without the support of a controlling interest of RCA shareholders (see App. at pp. 26-29).

No citizen should have to petition the highest court in the land for equal justice

where circumstances such as the above speak so clearly that writ should issue so that the evidence in this action may be properly ruled upon in the lower courts in accordance with law and equity.